

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Timothy-Leon Morris,

Petitioner,

v.

Carol Holinka,

Respondent.

**MEMORANDUM OPINION
AND ORDER**

Criminal No. 06-2255 ADM/JSM

Timothy-Leon Morris, *pro se*.

Tracy L. Perzel, Esq., Assistant United States Attorney, Minneapolis, MN, on behalf of Respondent.

I. INTRODUCTION

This matter is before the undersigned United States District Judge pursuant to Timothy-Leon Morris's ("Petitioner") "Motion in Request for Additional Findings on the Record/Request for Reconsideration Based on Facts before the court/Demand for Trial" [Docket No. 11]. For the reasons set forth below, Petitioner's Motion is denied.

II. BACKGROUND

In July 1997, a jury in the United States District Court in South Dakota found Petitioner guilty of violating federal drug statutes. Petitioner was sentenced to 240 months in federal prison. On direct appeal, the Court of Appeals for the Eighth Circuit upheld Petitioner's conviction and sentence. United States v. Morris, No. 97-3931, 1998 WL 327297 (8th Cir. June 5, 1998). Petitioner again challenged his conviction and sentence by filing a motion in the trial court under 28 U.S.C. § 2255. This motion was denied as time-barred.

On June 5, 2006, Petitioner filed a Petition for Writ of Habeas Corpus (the “June 5 Petition”) [Docket No. 1] in this Court. On August 10, 2006, Judgment [Docket No. 7] was entered dismissing the June 5 Petition for lack of jurisdiction. Specifically, this Court’s Order [Docket No. 6] rejected Petitioner’s arguments that the June 5 Petition was properly filed under 28 U.S.C. § 2241. Instead, the Order held that Petitioner could challenge his conviction and sentence only through a § 2255 motion, but that the Court lacked jurisdiction to consider such a motion unless Petitioner obtained a certificate to file a successive § 2255 motion from the Court of Appeals for the Eighth Circuit. In the alternative, the Order held that any § 2255 motion Petitioner might bring would be untimely.

In a “Petition for Writ of Habeas Corpus” dated October 23, 2006 [Docket No. 9], Petitioner claimed he never received a copy of the Order and Judgment dismissing the June 5 Petition. This Court issued an order on November 14, 2006, construing the October 23 Petition as a request to reopen the time to file an appeal from the August 10 Judgment, and granting the request. Petitioner was instructed that he had until November 28, 2006, to file an appeal. Rather than file an appeal, Petitioner filed the instant Motion on November 21, 2006.

III. DISCUSSION

In his Motion, Petitioner asks the Court to address the merits of his claim of actual innocence and to order a factual hearing. The Court, however, lacks jurisdiction to do so for the reasons stated in its August 10 Order. Therefore, Petitioner’s Motion must be denied.

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Petitioner's "Motion in Request for Additional Findings on the Record/Request for Reconsideration Based on Facts before the court/Demand for Trial" [Docket No. 11] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: December 6, 2006.